

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

April 15, 2016

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on April 1, 2016, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated March 17, 2016, the Department of the Corporation Counsel requested consideration of the possible settlement of Janet Sim, et al. v. County of Maui, et al., Civil 15-1-0571(2). Attached to the request is a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF JANET SIM, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. 15-1-0571(2)," and a copy of the First Amended Complaint.

The complaint alleges damages to Janet Sim's residence at 95 Alena Place, Kihei, Maui, Hawaii, and emotional distress as a result of sewage leaking from a main sewer line and infiltrating the home on or about November 18, 2014, and subsequent remedial efforts. The purpose of the proposed resolution is to authorize settlement of the case.

Your Committee notes Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement in excess of \$7,500.

A Deputy Corporation Counsel provided a brief overview of the case. She noted raw sewage entered Ms. Sim's home as a result of the overflow, and the County took immediate measures to clean the home and remediate the damage.

Because the case involves ongoing litigation, the Deputy requested the opportunity to convene an executive meeting.

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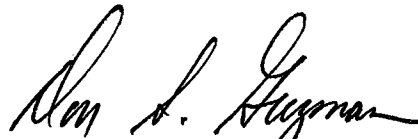
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Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 5-0 to recommend adoption of the proposed resolution. Committee Chair Guzman and members Carroll, Cochran, Couch, and Hokama voted "aye." Committee Vice-Chair Crivello and members Baisa, Victorino, and White were excused.

Your Committee of the Whole RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF JANET SIM, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. 15-1-0571(2)," be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



DON S. GUZMAN, Chair

Resolution

AUTHORIZING SETTLEMENT OF
JANET SIM, ET AL. VS. COUNTY OF MAUI, ET AL.,
CIVIL NO. 15-1-0571(2)

WHEREAS, Plaintiffs Janet Sim, Sharon Gonzales, and Roger Gonzales filed a lawsuit in the Circuit Court of the Second Circuit in the State of Hawaii on November 2, 2015, Civil No. 15-1-0571(2), against the County of Maui, for damage to their property that occurred on November 17, 2014; and

WHEREAS, Plaintiffs filed a First Amended Complaint on December 24, 2015 that added claims against RVS Construction, LLC, Randall Sirois, and Gus Hoeft as defendants; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Committee of the Whole; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a

Resolution No. _____

negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

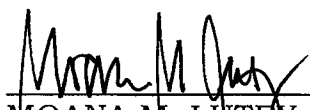
1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Committee of the Whole; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Environmental Management, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui
LIT 5555